

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY IMAGES (US), INC.,
Plaintiff,

v.

MICROSOFT CORPORATION,
Defendant.

**DECLARATION OF
FRANCIS J. AUL**

I, **FRANCIS J. AUL**, declare as follows:

1. I am a project assistant at the law firm Jenner & Block, in Washington D.C., counsel for Plaintiff Getty Images (US), Inc. I submit this declaration in support of Plaintiff's Order to Show Cause for Preliminary Injunction and Expedited Proceedings.

2. I am over 18 years of age and am competent to attest to the contents of this declaration. I have personal knowledge of the matters set forth below and, if called as a witness, I would testify consistent with this declaration.

3. Attached as Exhibit A to this declaration are true and correct copies of the following:

- a. A screenshot of the Getty Images Homepage, www.gettyimages.com, that I captured on September 2, 2014.
- b. A screenshot of search results from the Getty Images website after searching for "ferguson missouri" that I captured on September 2, 2014.
- c. A screenshot of search results from the Getty Images website after searching for "ferguson missouri" and placing my mouse over top of the first image that I captured on September 2, 2014.
- d. A screenshot I took after searching for "ferguson missouri" on the Getty Images website and clicking on the first result, which I captured on September 2, 2014.

- e. A screenshot of search results from the Getty Images website after searching for “ferguson missouri” and placing my mouse over top of the first image, which I captured on September 2, 2014, and to which I have added a red circle to identify the link to the Embed tool.
- f. A screenshot I took after searching for “ferguson missouri” on the Getty Images website and clicking on the first result, which I captured on September 2, 2014, and to which I have added a red circle to identify the link to the Embed tool.
- g. A screenshot I took after searching for “ferguson missouri” on the Getty Images website, clicking on the first result, and then clicking the link to the Embed tool, which I captured on September 2, 2014.
- h. A screenshot of search results from the Getty Images website after searching for “ebola 2014” that I captured on September 2, 2014.
- i. A screenshot of search results from the Getty Images website after searching for “ebola 2014” and placing my mouse over top of the second image that I captured on September 2, 2014.
- j. A screenshot I took after searching for “ebola 2014” on the Getty Images website, clicking on the second result, and then clicking the link to the Embed tool, which I captured on September 2, 2014.
- k. A screenshot I took after searching for “marilyn monroe” on the Getty Images website, which I captured on September 3, 2014.
- l. A screenshot I took of an image of Marilyn Monroe from Getty Images’ online store, located at <http://www.gettyimages.com/detail/news-photo/american-film-star-marilyn-monroe-born-norma-jean-mortensen-news-photo/3169185>, which I captured on September 3, 2014.
- m. A screenshot I took after searching for “marilyn monroe on staircase” on the Getty Images website, which I captured on September 3, 2014.
- n. A screenshot I took after searching for “marilyn monroe on staircase” on the Getty Images website and clicking on the first image, which I captured on September 3, 2014.
- o. A screenshot I took after searching for “marilyn monroe on staircase” on the Getty Images website, clicking on the first image, and clicking on the Embed link, which I captured on September 3, 2014.

- p. A screenshot I took of an image of a volcano, located at <http://www.thinkstockphotos.com/image/stock-photo-volcano-eruption/94975012>, which I captured on September 3, 2014.

4. Attached as Exhibit B to this declaration is a true and correct copy of an excerpt of the Getty Images Help Center webpage, located at <http://www.gettyimages.com/helpcenter#faq22>, which I captured on September 2, 2014.

5. Attached as Exhibit C to this declaration are true and correct copies of the following webpages, which display images attributed to Getty Images:

- a. An article appearing on the New York Magazine website entitled, "Behind the Best Pictures From Ferguson, With Getty Photographer Scott Olson," located at <http://nymag.com/daily/intelligencer/2014/08/behind-the-best-pictures-from-ferguson.html>, which I captured on September 2, 2014.
- b. An article appearing on the Daily American website entitled, "Powerful Photos From Protests In Ferguson, Missouri" located at http://www.dailyamerican.com/entertainment/parade/parade_living/powerful-photos-from-protests-in-ferguson-missouri/article_79641709-f156-5603-adce-ea36b69ec0d1.html, which I captured on September 2, 2014.
- c. An article appearing on the Metro news website entitled "PHOTOS: Protesters clash with police in streets of Ferguson, Missouri," located at <http://www.metro.us/newyork/news/national/2014/08/14/photos-protesters-clash-with-police-in-streets-of-ferguson-missouri/>, which I captured on September 3, 2014.

6. Attached as Exhibit D to this declaration are true and correct copies of the following webpages, which are examples of the use of Getty Images' "Embed" tool:

- a. An article appearing on The Week's website entitled "Israel bombs two Gaza high-rises," located at <http://theweek.com/speedreads/index/267045/speedreads-israel-bombs-two-gaza-high-rises>, which I captured on September 2, 2014.
- b. The previous article, after clicking the right mouse button on the Getty Images "Embed" tool, captured on September 2, 2014, to which I have added red circle around the menu that appears upon clicking the right mouse button.

- c. An article appearing on The Week's website entitled "Police in Ferguson arrest Getty Images photographer," located at "<http://theweek.com/speedreads/index/266590/speedreads-police-in-ferguson-arrest-getty-images-photographer>," which I captured on September 2, 2014.
- d. An article appearing on Animal New York's website entitled "Picture Ebola: Inside a West African Isolation Ward," located at <http://animalnewyork.com/2014/picture-ebola-inside-west-african-isolation-ward/>, which I captured on September 2, 2014.
- e. An article appearing on Here Is The City's website, entitled "Gallery: The best pictures from Chelsea's 6-3 win against Everton," located at <http://hereisthecity.com/en-gb/2014/08/31/gallery-the-best-pictures-from-chelseas-6-3-win-against-everton/>, which I captured on September 2, 2014.
- f. An article appearing on the website Huisgenoot.com, located at <http://huisgenoot.com/nuus/reusepanda-veins-swangerskap-vir-spesiale-behandeling/>, which I captured on September 2, 2014.

7. Attached as Exhibit E to this declaration are true and correct copies of screenshots taken from the Bing Images webpage, <http://www.bing.com/widget/image>, on September 2, 2014 and September 3, 2014.

8. Attached as Exhibit F to this declaration are true and correct copies of the following screenshots of Microsoft user guidance documents:

- a. A webpage entitled "Bing Image Widget," located at <http://www.bing.com/webmaster/help/get-the-bing-image-widget-9b05d178>, which I captured on September 3, 2014.
- b. A webpage entitled "Bing Images Widget (Beta) Terms of Service," located at <http://www.bing.com/webmaster/help/bing-image-widget-terms-of-service-6e6e374c>, which I captured on August 29, 2014.
- c. A webpage entitled "Install and Configure Knowledge Widget with Webmaster Tools," located at <http://www.bing.com/webmaster/help/knowledge-widget-install-and-configure-from-within-webmaster-tools-1db9d228>, which I captured on August 29, 2014.

- d. A webpage entitled "Insert a picture," located at <http://office.microsoft.com/en-us/powerpoint-help/insert-a-picture-HA102749393.aspx>, which I captured on September 2, 2014.
- e. A document entitled "Find images where you need them."

9. Attached as Exhibit G to this declaration are true and correct copies of the following webpages, which describe how the Bing Image Widget can be used:

- a. An article entitled "How To Embed Bing Image Results To Your Website?," located at <http://www.mybloggertricks.com/2014/08/embed-bing-image-results-to-website.html>, which I captured on August 29, 2014.
- b. An article entitled "No Image is Safe: Bing Imaged Widget," located at <http://blog.melchersystem.com/2014/08/26/bing-image-widget/>, which I captured on August 29, 2014.

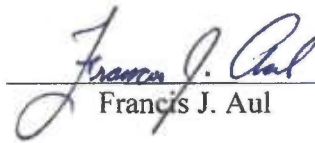
10. Attached as Exhibit H to this declaration are true and correct copies of the following webpages, which are examples of websites that have implemented the Bing Image Widget:

- a. <http://www.theoakstorega.com/>, which I captured on September 1, 2014
- b. An excerpt of <http://healthnexercise.com/>, which I captured on September 3, 2014.
- c. <http://www.makar80.eu/index.html>, which I captured on September 1, 2014.
- d. <http://total-wallpapers.com/>, which I captured on September 3, 2014.
- e. <https://www.dannyfdukes.com/>, which I captured on September 2, 2014, and to which I have added a red circle around the Bing Image Widget.
- f. <http://yusufferfitness.com/sarah-bistro>, which I captured on September 2, 2014.

11. Attached as Exhibit I to this declaration are true and correct copies of screen captures taken on September 2 and 3, 2014, by paralegal staff at Jenner & Block and Getty Images illustrating the display of Plaintiff's copyrighted works in suit through the Bing Image Widget.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 3, 2014.



Francis J. Aul